RECENT CASES

AGENCY — NATURE AND INCIDENTS OF THE RELATION — SALE BY AGENT TO HIMSELF. — The defendant employed the plaintiff as agent to sell land at a certain minimum price, the agent to have as commission everything above that price. The plaintiff tendered the price himself and asked for a conveyance, but the defendant refused. The plaintiff now seeks specific performance. *Held*, that specific performance will be granted. *Hulton* v. *Sherrard*, 150 N. W. 135 (Mich.).

An agent owes the highest duty of loyalty to his principal, and therefore an agent to sell cannot himself become the buyer. *McNutt* v. *Dix*, 83 Mich. 328, 47 N. W. 212; *Porter* v. *Woodruff*, 36 N. J. Eq. 174; *Rockford Watch Co.* v. *Manifold*, 36 Neb. 801, 55 N. W. 236. It has been suggested, however, that where the price is fixed and leaves the agent no discretion he may act for both buyer and seller. See *Empire State Ins. Co.* v. *American Central Ins. Co.*, 138 N. Y. 446, 449, 34 N. E. 200, 201. Whatever may be the merits of such a doctrine, the principal case seems unimpeachable. By express agreement the agent was to act for himself after the price stipulated for by the principal was reached, and accordingly, he had no interest against his duty. To say that the contract should be voidable because the agent might be tempted to sell to an unwelcome purchaser would be entirely too fanciful an objection. *Synott* v. *Shaughnessy*, 2 Ida. 111, 7 Pac. 82.

BANKS AND BANKING — COLLECTIONS — LIABILITY OF COLLECTING BANK IN GARNISHMENT PROCEEDINGS. — The defendant deposited in the A bank for collection a draft drawn on the plaintiff payable to the bank. The A bank credited the amount to the defendant's account, which was already overdrawn, and sent the draft to the B bank which collected from the plaintiff. The plaintiff then sued the defendant and garnished the B bank. The A bank intervened and claimed the fund. *Held*, that the A bank is entitled. *Scott* v. *McIntyre Co.*, 144 Pac. 1002 (Kan.).

The question whether the deposit of paper in a bank for collection creates the relation of debtor and creditor, or of agent or trustee, is largely one of fact. One view is that *primâ facie* the bank becomes an agent for collection. *Balbach* v. *Frelinghuysen*, 15 Fed. 675. See 18 HARV. L. REV. 300; 28 *id.* 205. The weight of authority, however, appears to be that, at least under the circumstances of the principal case, the relation is that of debtor and creditor. *Metropolitan National Bank* v. *Loyd*, 90 N. Y. 530; *Burton* v. *United States*, 196 U. S. 283. Under the latter view the decision is clearly right, for the bank takes the draft as its own and is entitled to the proceeds. On the former hypothesis, the situation is somewhat more complicated. Some courts hold that the collecting bank is a sub-agent, and give the depositor a direct legal right against it. *First National Bank of Circleville* v. *Bank of Monroe*, 33 Fed. 408. See *San Francisco National Bank* v. *American National Bank*, 5 Cal. App. 408, 90 Pac. 558. On the other hand, it is sometimes said that the depositor has only an equitable right. See *Naser* v. *First National Bank*, 116 N. Y. 492, 499, 22 N. E. 1077, 1078. This would seem the correct view, for the depositary bank is in effect the trustee of the claim for the depositor. See 18 HARV. L. REV 300. The Kansas statute, however, allows garnishment of credits in which the principal defendant may be interested up to the extent of his interest. KAN. GEN. STAT., § 5835. This would seem to cover a case where the interest is equitable. But since the depositor must work out his rights through the depositary bank, the garnishing creditor would on any theory be postponed to

the depositary, whose lien in the principal case in fact exceeded the sum collected.

BILLS AND NOTES — CHECKS — NEGLIGENCE OF DRAWER: NEGLIGENT USE OF PROTECTOGRAPH. — A bank check for three dollars, otherwise properly drawn, was negligently stamped with a protectograph, "Not over $500." The payee raised the check to three hundred and sixty dollars and indorsed it to a *bonâ fide* purchaser, who now sues the drawer to recover the face value of the check. *Held*, that he can recover. *Second National Bank of Vincennes* v. *Campbell*, Ct. App., Hamilton County, Ohio (not yet reported).

If a check or other negotiable instrument is drawn in such a way as to suggest and facilitate the making of alterations which cannot be detected on inspection, a *bonâ fide* purchaser of the altered instrument may recover the full face value. *Garrard* v. *Haddan*, 67 Pa. St. 82; *Harvey* v. *Smith*, 55 Ill. 224; see *Young* v. *Grote*, 4 Bing. 253. *Contra*, *Knoxville National Bank* v. *Clark*, 51 Ia. 264; *Colonial Bank of Australasia* v. *Marshall*, [1906] A. C. 559. In the United States the authority to the contrary limits recovery to cases where the relation of banker and customer exists. See *Greenfield Savings Bank* v. *Stowell*, 123 Mass. 196, 201; 2 DANIEL, NEGOTIABLE INSTRUMENTS, 6 ed., § 1405. But a protectograph stamp is not an essential of a properly drawn check. It is in the nature of the marginal figures, which are not an integral part of the instrument. *Smith* v. *Smith*, 1 R. I. 398; *Garrard* v. *Lewis*, 10 Q. B. D. 30. See 1 DANIEL, NEGOTIABLE INSTRUMENTS, 6 ed., § 86. The case is thus not to be judged as if the bank was guilty of negligence in omitting to stamp the draft, "Not over $5." If the drawer had left the perfectly drawn instrument unstamped, he clearly would not have been liable. *Dana* v. *Underwood*, 19 Pick. (Mass.) 99; *Smith* v. *Chester*, 1 T. R. 654. And yet the forger could then have forged the alteration with equal ease and added a protectograph stamp to confirm his forgery. The mere presence of the protectograph, furthermore, cannot be said to have facilitated the alterations, for it was still necessary for the forger himself to erase parts of the existing instrument. By drawing the check properly in all its essential elements, the drawer satisfied his duty to the purchaser; the mere fact that in taking an unrequired precaution to safeguard his own interests, he acted without due care in attaching the protectograph stamp, should not make him liable to a purchaser who placed an uninvited reliance upon the same safeguard. Accordingly the decision in the principal case must be deemed wrong.

BILLS AND NOTES — DEFENSES — RELEASE OF SECURITY BY PAYEE WITHOUT ASSENT OF SURETY CO-MAKER — NEGOTIABLE INSTRUMENTS LAW. — The defendants signed a note as surety co-makers. The principal co-maker gave the plaintiff payee a deed of trust on land as security. The plaintiff, with notice of the suretyship relationship and without the assent of the defendants, released this security. *Held*, that the plaintiff cannot recover. *Long* v. *Shafer*, 171 S. W. 690 (Mo. App.).

The court reaches this result on the ground that a payee cannot be a holder in due course, and that under Section 58 of the Negotiable Instruments Law the instrument is therefore "subject to the same defenses as if it were non-negotiable." At common law, of course, any binding extension of time or release of security by a holder with notice of the suretyship would give a defense to the surety co-maker. *German Savings Ass'n* v. *Helmrick*, 57 Mo. 100; *Cummings* v. *Little*, 45 Me. 183; see 59 U. OF PA. L. REV. 532; 1 BRANDT, SURETYSHIP, 3 ed., § 38. But under the Negotiable Instruments Law it has been held that Section 192, making an accommodation maker primarily liable, and Sections 119 and 120, specifying extension of time as a method of releasing a party secondarily liable and not mentioning it for one primarily liable,